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No. 87-1501

In the Supreme Court of the United States

OCTOBER TERM 1987

FARWEST STEEL CORPORATION,
Petitioner,

v.

BARGE SEA-SPAN 241, aka
Barge Ceres, her tackle, gear, and
furnishings, in rem; and
WEST COAST CHARTERS, INC.,
a corporation,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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REASONS FOR REFUSING TO GRANT CERTIORARI

The petitioner misstates the issue in Farwest II at Petition, pp 8-9. This case involves the correct application of 46 USC Section 972 of the Maritime Lien Act to a general ship repair contractor.

Under 46 USC Section 971 a person to whom "management" of the vessel is entrusted is presumed to have the requisite authority to incur maritime liens for the vessel. This section was not amended in 1971 as Petitioner seems to suggest. It has remained unchanged since 1920.

The trial court held:

> "Under these facts, the court concludes that Nichols was not authorized by West Coast to order steel from Farwest so as to bind BARGE; it further finds that Nichols was not an agent under agency principals of West Coast and it finds that Nichols was simply a general contractor who ordered steel from Farwest in order to fulfill its

> contractual promise to West Coast to repair and rebuild BARGE. Farwest's claims are not within the provisions of the Maritime Lien Act and no lien arises." Petition, App. pp 20-21.

In Farwest II, the Ninth Circuit held:

> "Here, Nichols' status was that of an independent contractor for repairs rather than of an agent of the owner.... There simply is no significant evidence in the record which indicates that (1) Nichols was acting as anything other than an independant repair contractor, or (2) that the owner intended that Farwest Steel be engaged as a subcontractor.
>
> We hold that Nichols was not an authorized person within the meaning of section 971." Petition App. pp. 69-70.

In light of the concurrent findings of fact by the courts below, this court should decline review. Farwest II is not in conflict with any decision

of this Court or any other Court of Appeals and is consistent with a long line of lower court decisions. Marine Coatings of Alabama, Inc. v. United States, 792 F. 2d 1565, 1569 (11th Cir. 1986); Marine Coatings of Alabama v. United States, 1987 AMC 2365, 2371-2374, (S.D. Ala. 1987); Sands Construction Co., Inc. v. United Virginia Bank, 1985 AMC 1165, 1167 (E.D. Va. 1984); AAB Electrical Ind. v. Control Masters, 1988 AMC 1795, 1799-1801 (E.D. La. 1980); The Juniata 277 Fed. 438, 440-441 (D. Mass. 1922).

The petition should be denied.

Respectfully Submitted:

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